

RULES OF THE
RHODE ISLAND HEALTH AND
EDUCATIONAL BUILDING CORPORATION
FOR THE
SELECTION OF ARCHITECTS, ENGINEERS AND CONSULTANTS
(including Underwriters and Financial Advisors)

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BUILDING CORPORATION FOR THE SELECTION OF ARCHITECTS,
ENGINEERS AND CONSULTANTS

Article I – General Provisions

Section 1.1 Introduction.

Rhode Island General Laws §45-38.1-5(9) gives the Corporation the power “to employ engineers, architects, construction and financial experts, superintendents, managers, and such other employees and agents that may be necessary in its judgment”.

The purpose of these rules (Rules) is to comply with the requirements of Chapter 2 of Title 37 of the Rhode Island General Laws (State Purchasing Statute) in connection with the procurement of architectural, engineering and consulting services by the corporation.

Section 1.2 Definitions.

(a) The words defined in this subsection shall have the meanings set forth below wherever they appear in these Rules, unless the context in which they are used clearly requires a different meaning.

“Architectural and engineering services” means those professional services within the scope of practice of architecture, professional engineering, or registered land surveying, or pertaining to construction.

“Consultant” means any person engaged to give direction or information as regards a particular area of knowledge in which the person is a specialist and/or has expertise. For purposes of these Rules, the term “Consultant” shall include, but not be limited to, any financial advisor or underwriter engaged by the Corporation. Provided, however, that due to the unique nature of the underwriter selection process (including, without being limited to, the desire to permit the borrowing institution input on such selection), specific rules, set forth in Section 2.8 and following, have been adopted for the selection of underwriters.

Section 1.3 Application of Rules.

(a) These Rules shall apply to all the expenditures of funds by the Corporation under a contract for architectural, engineering and consultant services, except contracts or like business arrangements between the Corporation and the State and contracts between the Corporation and political subdivisions of the State or between the Corporation and other governments.

(b) Nothing in these Rules shall prevent the Corporation from complying with the terms and conditions of any grant, gift, bequest or agreement.

(c) The provisions of these Rules shall be considered to be incorporated in all contracts of the Corporation to which they apply.

Section 1.4 Procurement Responsibilities of The Corporation.

Pursuant to Section 4 of the Corporation's enabling statute, all of the powers, of the Corporation are vested in the Board of Directors of the Corporation. Therefore, for purposes of these Rules the Board of Directors of the Corporation shall have all of the authority of the "chief purchasing officer" of the Corporation under the State Purchasing Statute. Accordingly, the term "Corporation" shall be used in these Rules to designate the Board of Directors of the Corporation acting in its capacity as the chief purchasing officer of the Corporation. Provided, however, that pursuant to the State Purchasing Statute (including, without being limited to, Section 10 thereof), the Corporation may distribute certain procurement activities and functions to various members of the Board of Directors, and Executive Director, or the professional advisers to the Corporation; provided, however that the Corporation retains, when required by the State Purchasing Statute, ultimate decision making authority over procurements.

Section 1.5 Public Access to Procurement Records.

Except as otherwise provided for herein all procurement records of the Corporation shall be public record to the extent provided in the "Rules of Rhode Island Health and Educational Building Corporation Relating to Access To Its Public Records" and shall be available to the public as provided in such Rules.

Section 1.6 Procurement Decisions Of The Corporation.

Every determination required by these Rules shall be in writing and based upon written findings of fact by the Corporation. These determinations and written findings shall be retained in an official contract file in the offices of the Corporation.

Article II – Selection of Architects, Engineers and Consultants

Section 2.1 General Policy.

It shall be the policy of the corporation to publicly announce its requirements for architectural, engineering and consulting services, which are reasonably estimated to exceed twenty thousand dollars (\$20,000), and to negotiate contracts for such professional services on the basis of demonstrated competence and qualifications and at fair and reasonable prices.

Section 2.2 Prequalification of Contractors.

(a) Architects, engineers and consultants wishing to do business with the Corporation shall submit to the Corporation annually a statement of qualifications and performance data which shall include, but not be limited to the following:

- 1 The name of the firm and the location of all of its offices, specifically indicating the principal place of business;
2. The age of the firm and its average number of employees over the past five years;
3. The education, training, and qualifications of members of the firm and key employees;
4. The experience of the firm, reflecting technical capabilities and project experience; and
5. Such other pertinent information as requested by the Executive Director.

(b) The Executive Director shall review all such submissions and shall develop therefrom a tentative prequalified list. The Executive Director shall present such contractors who have submitted qualifications to the Corporation but are not included on the prequalified list, to the Corporation for approval. On the Corporation's review and approval of such tentative list (including any revisions thereto made by the Corporation), such tentative list shall become the soliciting mailing list contemplated by Section 25 of Chapter 2, Title 37 of the Rhode Island General Laws.

Section 2.3 Public Announcement of Needed Architectural Engineering or Consultant Services.

The Corporation shall give public notice of the need for architectural, engineering or consultant services which are reasonably estimated to exceed twenty thousand dollars (\$20,000). Such public notice shall be published sufficiently in advance of the date when responses must be received in order that interested parties have an adequate opportunity to submit a statement of qualifications and performance data. The notice shall contain a brief statement of the services required, describe the project and specify how a solicitation containing specific information on the project may be obtained. The notice may be published in a newspaper of general circulation in the State and in such other publications as in the judgment of the Corporation shall be desirable or shall be published pursuant to Section 17.1 of Chapter 2 of Title 37 of the Rhode Island General Laws, the Rhode Island vendor information program.

Section 2.4 Solicitation.

(a) A solicitation shall be prepared which describes the Corporation's requirements and sets forth the evaluation criteria. It shall be distributed to persons on the solicitation mailing list.

(b) The solicitation shall describe the criteria to be used in evaluating the statement of qualification and performance data and in the selection of firms. Criteria shall include, but are not limited to:

competence to perform the services as reflected by technical training and education; general experience; experience in providing the required services; and the qualifications and competence of persons who would be assigned to perform the services;

ability to perform the services as reflected by workload and the availability of adequate personnel, equipment, and facilities to perform the services expeditiously;

past performance as reflected by the evaluation of private persons and officials of other governmental entities that have retained the services of the firm with respect to such factors as control of costs, quality of work, and an ability to meet deadlines; and

the proposed approach to the project, where applicable.

(c) For services reasonably estimated to exceed twenty thousand dollars (\$20,000), a bidder's conference shall be held which described the criteria to be used in evaluating the statement of qualification and performance data and in the selection of firms. The scope of work shall be discussed and further defined at such conference, including on-site visits, if appropriate.

Section 2.5 Evaluation Of Statements Of Qualifications And Performance Data.

The Corporation shall evaluate:

(a) Statements that may be submitted in response to the solicitation of architectural, engineering services or consultant services; and

(b) Statements of qualifications and performance data, if their submission is required.

All statements and statements of qualifications and performance data shall be evaluated in light of the criteria set forth in the solicitation for architectural, engineering services or consultant services. The Corporation may waive informalities in any statements and statements of qualification and performance data.

Section 2.6 Final Selection of Contractors.

For each contract to be awarded, the Corporation shall select no more than three (3) firms (or two (2) if only two (2) apply) evaluated as being professionally and technically qualified. The firms selected, if still interested in providing the services, shall make a representative available to the Corporation at such time and place as it shall determine, to provide such further information as it may require.

The Corporation shall negotiate with the highest qualified firm for a contract for architectural, engineering or consultant services for the Corporation at compensation which the Corporation determines to be fair and reasonable to the Corporation. In making such determination, the Corporation shall take into account the professional competence of the offerors, the technical merits of the offerors, and the price for which the services are to be rendered. The Corporation shall be responsible for the final selection of the providers of architectural, engineering or consulting services.

Section 2.7 Contracts Not Exceeding \$20,000.

For every contract for architectural, engineering, and consulting services, the fees for which are not reasonably expected to exceed twenty thousand dollars (\$20,000), the Corporation shall be responsible for the final selection of the architectural, engineering and consultant firm. The Corporation shall, however, notify the Board of Directors of the Corporation of its selection. The Corporation shall use the criteria set forth in Section 2.4(b) in making such determinations. Each determination shall be justified in writing.

Section 2.8 Method of Structuring and Underwriting Bond Issues.

In general, the Corporation will attempt to structure and underwrite a bond issue that will produce the lowest possible interest cost to the borrowing institution while protecting the interests of the Corporation. The Corporation will have the sole authority to determine the structure of each of its bond issues. Because of the complexity of most of the Corporation's bond issues, the Corporation will select its underwriter(s) for a particular bond issue based on a competitive negotiation procedure described in Section 2.8.1 below, unless the Corporation determines that a competitive sealed bid procedure, described in Section 2.8.2 below is feasible.

Section 2.8.1 Competitive Negotiation.

After the receipt by the Corporation of an application for financing, the following actions will be taken:

(a) The Executive Director, in consultation with the Financial Advisor, Counsel to the Corporation and a representative of the borrowing institution, shall prepare a Request for Proposals ("RFP").

The Executive Director shall determine the time period of the RFP process.

(c) The Executive Director send the RFP to all firms on the Corporation's solicitation mailing list of underwriters, compiled in accordance with Section 2.2 of these rules.

(d) The Corporation will appoint an Underwriters' RFP Review Committee ("Review Committee") which will review all the RFP's receive in response to the Corporation's solicitation. The Review Committee will consist of the Chairman of the Board of Directors of the Corporation, Executive Director, Financial Advisor, and a representative from the borrowing institution.

(e) The Review Committee shall evaluate:

(i) Statements submitted in response to the RFP;

(ii) Statements of qualifications and performance data, if their submission is required. The Review Committee may also evaluate the proposing firms' annual statement of qualifications;

Prior experience the Corporation or the borrowing institution has had with the proposing firm;

Anticipated underwriters' discount.

(f) The Review Committee may then select an appropriate number of proposing firms to interview to provide such further information to the Review Committee as it may require.

(g) After the Review Committee has reviewed all its required information, it will submit a recommendation to the Board of Directors of the Corporation, along with the reasons for its recommendation, as to what firm(s) and in what capacity, should be awarded the underwriting contract.

(h) The Board of Directors shall review the recommendation of the Review Committee, and may request additional information from the Committee or from the proposing firms. Based on its review, the Board of Directors shall select the underwriter(s) to proceed with a particular bond issue.

Section 2.8.2 Competitive Sealed Bid Solicitation.

If the Corporation determines that a competitive sealed bid is feasible and practicable, then the Corporation shall direct that the following actions be taken:

(a) That the Executive Director, Counsel to the Corporation, Financial Advisor and Bond Counsel negotiate with the borrowing institution all the pertinent terms of the bond issue. After the pertinent terms have been negotiated, the Corporation shall direct:

- (i) Bond Counsel to prepare (1) a Preliminary Official Statement describing all the details of the bond issue, conforming to the Corporation's policies regarding offering statements as well as appropriate federal and state regulations governing the sale of securities; and (2) a Notice of Competitive Bid;
- (ii) the Executive Director to publish the Notice of Competitive Bid in the Providence Journal and such other publication as he/she deems appropriate. The Notice of Competitive Bid shall state the details of the bid the criteria for the award of the bid and such other information as the Executive Director deems appropriate;
- (iii) the Executive Director will distribute the Notice of Competitive Bid to all firms on the Corporation's solicitation mailing list of underwriters, compiled in accordance with Section 2.2 of these Rules.

(b) Award of Competitive Bid. The Corporation shall award the underwriting contract to the lowest bid interest, cost or the lowest evaluated or responsive bid price. In general, the corporation will award the bonds to the firm offering the lowest True Interest Cost on the bonds. The Financial Advisor will verify the True Interest Cost calculation of each of the bidders. The Corporation may select another method of awarding the bonds, provided such a method does not violate the Corporation's general policy as to the award of underwriting contracts and that the method of award is described in the Notice of Competitive Bid.

(c) In the event a protest is filed in a timely manner under this Section, the Corporation shall not proceed further with the solicitation or award which is the subject of the protest until it has issued a decision on the protest, or determined that continuation of the procurement is necessary to protect a substantial interest of the Corporation.

Article III - Remedies

Section 3.1 Resolution of Protested Solicitation and Award.

(a) Any actual or prospective bidder, offeror, or vendor who is aggrieved in connection with the solicitation or award of any contract may file a protest with the Corporation. A protest or notice of other controversy must be filed promptly and in any event within two (2) calendar weeks after such aggrieved person knows or should have known of the facts giving rise thereto. All protests or notices of other controversies must be in writing.

(b) The Corporation shall promptly issue a decision in writing regarding such protest. A copy of that decision shall be mailed or otherwise furnished to the aggrieved party and shall state the reasons for the action taken.

(c) In the event a protest is filed in a timely manner under this Section, the Corporation shall not proceed further with the solicitation or award which is the subject of the protest until it has issued a decision on the protest, or determined that continuation of the procurement is necessary to protect a substantial interest of the corporation.

Section 3.2 Debarment and Suspension.

(a) After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Corporation may debar a person for cause from consideration for award of contracts contemplated by these Rules. The debarment shall not be for a period of more than three years. The Corporation may suspend a person from consideration for award of contracts if there is probable cause for debarment. The suspension shall not be for a period exceeding three months.

(b) The causes for debarment or suspension include the following:

- (i) conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contractor subcontract;
- (ii) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a contractor with the Corporation;

conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;

violation of contract provisions, as set forth below, of a character which is regarded by the Corporation to be so serious as to justify debarment action:

- (a) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
- (b) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;

- (v) any other cause the Corporation determines to be so serious and compelling as to affect responsibility as a contractor, including debarment by a governmental entity.
- (c) The Corporation shall issue a written decision to debar or suspend. The decision shall:
 - (i) state the reasons for the action taken; and
 - (ii) inform the debarred or suspended person involved of its rights to judicial review.
- (d) A copy of the decision under Subsection (c) of this Section shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other party intervening.

Section 3.3 Resolution of Contract Disputes.

If any claim or controversy arising under contracts to which these Rules apply is not resolved by mutual agreement, the Corporation shall promptly issue a decision in writing regarding the subject matter of such claim or controversy. A copy of that decision shall be mailed or otherwise furnished to the contractor. If the Corporation does not issue a written decision within thirty (30) days after written request for a final decision, or within such longer period as might be established by the parties to the contract in writing, then the contractor may proceed as if an adverse decision had been received from the Corporation.

Article IV - Additional Matters

Section 4.1 Equal Employment Opportunity. .

For all contracts for supplies and services exceeding Ten Thousand Dollars (\$10,000), vendors must comply with the requirements of federal executive order 11246, as amended, and Section 28-5.1-10 of the General Laws of the State of Rhode Island. Failure to comply will be considered a substantial breach of the contract subject to penalties prescribed on regulations administered by the Department of Administration of the State.

Section 4.2 Conflict of Interest..

No member or employee of the Corporation shall have any interest, financial or otherwise, direct or indirect, or engage in any activity which is in substantial conflict with the proper discharge of his or her duties as a member or employee of the Corporation.

Article V – Effective Date

Section 5.1. Effective Date.

These Rules shall become effective twenty (20) days following the date they are filed with the Secretary of State.

Section 5.2. Contracts in Effect on Effective Date.

These Rules shall not change in any way a contract commitment by the Corporation nor of a vendor to the Corporation which was in existence on the effective date of these Rules.

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